



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Vacco Industries--Reconsideration

File: B-227088.2

Date: May 22, 1987

DIGEST

Protest to contracting agency of alleged improprieties in request for proposals is untimely if filed with proposal, and General Accounting Office therefore will not consider subsequent protest following initial adverse agency action, even if contracting agency considered protest's merits.

DECISION

Vacco Industries requests that we reconsider our May 4, 1987, dismissal, as untimely, of the firm's protest of specification improprieties in request for proposals (RFP) No. N00024-86-R-4462(S), issued by the Naval Sea Systems Command for distilling plant steam reducing values. We affirm the dismissal.

Vacco filed the protest with our Office by letter of April 30, 1987, following the Navy's denial of Vacco's earlier protest at that level. We dismissed the protest because Vacco stated in its letter that it had protested to the Navy by letter of September 11, 1986, whereas offers in response to the RFP were due September 8. Under our Bid Protest Regulations, a protest of apparent solicitation improprieties, like Vacco's, must be filed with either the contracting agency or our Office before proposals are due, 4 C.F.R. § 21.2(a)(1) (1986), and if a protest was filed with the agency first, a subsequent protest to our Office will be considered only if the prior protest itself was timely. 4 C.F.R. § 21.2(a)(3).

In requesting reconsideration, Vacco states that it incorrectly indicated it had not protested to the Navy until sending the September 11 letter. Vacco asserts that it actually submitted a protest to the agency by letter of September 5, "along with our proposal." The protest to the Navy still was untimely, however, since a protest filed with a proposal is not timely. Litton Datamedix, B-219731, Sept. 23, 1985, 85-2 C.P.D. ¶ 322. The fact that the Navy

apparently considered Vacco's untimely protest on the merits does not preclude our later dismissal of the matter. Triple A Shipyards, B-213433, Apr. 6, 1984, 84-1 C.P.D. ¶ 385.

for Raymond E. Gias
Harry R. Van Cleve
General Counsel